

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-009298

10/03/2011

HONORABLE MARIA DEL MAR VERDIN

CLERK OF THE COURT
L. Firriello
Deputy

MARK GORZEN

GREGORY G MCGILL

v.

MARC LOTENBERG, et al.

MARC LOTENBERG
7917 WILLOUGHBY AVE, # 8
WESY HOLLYWOOD CA 90046

WILLIAM H DOYLE
JOHN FRIEDEMANN
CHRISTOPHER M GOODMAN
944 MEDIA INC
C/O BILL GARR, VP
4253 N. SCOTTSDALE RD., STE. 200
SCOTTSDALE AZ 85251-3931
944 MAGAZINE
C/O BILL GARR
4253 N. SCOTTSDALE RD., STE. 200
SCOTTSDALE AZ 85251-3931
M L MEDIA INC
C/O BILL GARR
4253 N. SCOTTSDALE RD., STE. 200
SCOTTSDALE AZ 85251
GIL SHUGA

MINUTE ENTRY

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11:40 a.m. This is the time set for continuing settlement conference. Plaintiff Mark Gorzen is present and represented by counsel Gregory G. McGill. Plaintiffs Nakoolani Gorzen and Thomas N. O'Leary are present and represented by counsel John Friedeman. Defendant Marc Lotenberg is present on his own behalf. Defendant Sandra E. Portney is present and represented by counsel William H. Doyle and Dwayne Ross. Defendant Harry P. Friedlander is present and represented by counsel Gil Shuga.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held regarding settlement conference with Judge Oberbillig on September 28, 2011.

Since the matter has not settled,

IT IS ORDERED setting Pretrial Management Conference this day at 1:45 p.m. in this division.

11:55 a.m. Court stands at recess.

1:54 p.m. Court reconvenes with the parties and respective counsel present, with the exception of Sandra E. Portney.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Court is advised that an agreement pursuant to Ariz. R. Civ. P. Rule 80 has been reached between Mark Gorzen and Marc Lotenberg.

Mr. McGill recites the agreement on the record.

Mr. Gorzen and Mr. Lotenberg are both sworn and testify that they heard the agreement as dictated by Mr. McGill and agree with the stipulations contained therein and enter into the agreement in good faith.

The Court accepts the agreement and enters it of record.

IT IS ORDERED that the agreement signed by both Mr. Gorzen and Mr. Lotenberg shall be filed with the Court not later than **October 17, 2011**.

Mr. Lotenberg agrees to return to Phoenix for one day in order to testify at the trial.

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2:32 p.m. Mr. McGill leaves this conference to attend another conference.

Court stands at recess.

3:10 p.m. Court reconvenes with the parties and respective counsel present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Court is advised that an agreement pursuant to Ariz. R. Civ. P. Rule 80 has been reached between Harry P. Friedlander and Nakoolani Gorzen.

Mr. Shuga recites the agreement on the record.

Mr. Friedlander and Ms. Gorzen are both sworn and testify that they heard the agreement as dictated by Mr. Shuga and agree with the stipulations contained therein and enter into the agreement in good faith.

The Court accepts the agreement and enters it of record.

IT IS ORDERED that the agreement signed by both Mr. Friedlander and Ms. Gorzen shall be filed with the Court not later than **October 17, 2011**.

Court is advised that an agreement pursuant to Ariz. R. Civ. P. Rule 80 has been reached between Mark Gorzen and Nakoolani Gorzen.

Mr. McGill and Mr. Friedlander recite the agreement on the record.

Mr. Gorzen and Ms. Gorzen having been previously sworn, testify that they heard the agreement as dictated by Mr. McGill and Mr. Friedlander and agree with the stipulations contained therein and enter into the agreement in good faith.

The Court accepts the agreement and enters it of record.

IT IS ORDERED that the agreement signed by both Mr. Gorzen and Ms. Gorzen shall be filed with the Court not later than **October 17, 2011**.

The only claim that now remains before the Court is between Mark Gorzen and Sandra E. Portney for legal malpractice.

Motions *in Limine* are discussed as follows:

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Plaintiff Nakoolani Gorzen's Motion *in Limine* to Preclude Defendants Mark Gorzen and Harry Friedlander From Introducing Evidence that Non-Disclosure of the PPA Should Have Been Detected filed August 24, 2011.

IT IS ORDERED deeming this Motion moot.

Plaintiff Nakoolani Gorzen's Motion *in Limine* to Preclude Defendants Mark Gorzen and Harry Friedlander From Introducing Evidence that Damage Reduction Ought Occur Based Upon Events Occurring Subsequent to the Concealment of the PPA filed August 25, 2011.

IT IS ORDERED deeming this Motion moot.

Gorzen's Motion *in Limine* to Preclude any Trial Evidence Regarding "Child Support", "Arrest Warrants" or Incidental Incarceration filed August 25, 2011.

Oral argument is heard.

IT IS ORDERED the Defendant may address the only the fact that there was a contempt hearing for monies owed in the divorce proceeding. The parties agree that child support and arrest warrant shall not be disclosed before the jury.

Portney Defendants' Motion *in Limine* No. 1 Re: Scope of Expert Testimony of Plaintiff Mark Gorzen's Expert Witness Nancy Greenlee filed August 26, 2011.

IT IS ORDERED granting said Motion. Ms. Greenlee's testimony shall be limited to testifying as to her opinion contained in her expert opinion of April 29, 2009 only. *Voir dire* of the witness may be conducted by defense counsel prior to her giving testimony to determine her qualifications in the area of drafting documents.

Portney Defendants' Motion *in Limine* No. 2 Re: Scope of Expert Testimony of Plaintiff Mark Gorzen's Expert Witness Scott A. Sherman filed August 26, 2011.

IT IS ORDERED the witness may testify only as to those issues disclosed. The parties agree that reference to any deferred salary is a moot issue.

As to Defendant's Motions *in Limine* No. 3 and No. 4, the Court will defer ruling on these Motions until October 4, 2011, to give the Plaintiff an opportunity to prepare.

Discussion is held re: naming Marc Lotenberg as a non-party at fault.

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Counsel are directed to brief the issue and be prepared to address it on October 4, 2011.

Trial Instructions are discussed and listed below:

1. The length of the trial is discussed. In that regard, the Court confirms a **Seven (7) Day Jury Trial beginning October 4, 2011 at 1:30 p.m. and continuing on October 5, 2011 at 9:30 a.m., October 11, 2011 at 1:30 p.m., October 12, 2011 at 9:30 a.m., October 13, 2011 at 9:30 a.m., October 18, 2011 at 9:30 a.m. and October 19, 2011 at 9:30 a.m.**
2. The parties stipulate to invoke the rule of exclusion of witnesses.
3. The jury shall consist of **Eight (8) Jurors and One (1) alternate for a total of Nine (9) Jurors.** Counsel stipulate that eight (8) jurors will be permitted to deliberate, and
4. an agreement of six (6) of the eight (8) jurors will be necessary to return a verdict.
5. Counsel shall meet and confer regarding authenticity, foundation and admission of exhibits to expedite the process during trial. Counsel shall also confer to eliminate any duplicate exhibits. Counsel are advised that exhibits should be received into evidence prior to asking witnesses to testify regarding the substance of the exhibit.
6. Counsel shall provide 24 hours notice to each party of the witnesses each party intends to call, and any exhibits they plan to use during examination of those witnesses to which the other side has made an objection.
7. The jury panel shall consist of 35 persons. The Court advises counsel that it uses the “struck” method for jury selection. Counsel are further advised that at the conclusion of the Court’s *voir dire*, counsel will be permitted approximately **15 minutes** each to ask their own follow-up *voir dire* questions.
8. Counsel are directed to draft and submit a short (a few sentences) joint summary of the case to the Court no later than the morning of the first day of trial. The Court will read the joint summary to the prospective jurors at the beginning of jury selection.
9. Counsel shall not make speaking objections; counsel shall only state the legal basis for the objection.

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10. Counsel do not need to request permission to approach the witness or the Clerk for retrieval of exhibits.
11. Counsel shall request permission to approach the bench.
12. Bench conferences are discouraged, however, if necessary, conferences will be held at the side of the bench outside of the jury's hearing. More optimally, conferences will be held prior to the start of trial for the day, or after trial adjourns for the evening.
13. Counsel are advised that the Court provides jurors with notebooks which contain jury instructions, Court contact information and paper for note-taking. Copies of stipulated exhibits received in evidence prior to trial may be incorporated in the juror notebooks. Counsel are directed to provide sufficient copies to the Court's staff for placement in the notebooks prior to distribution.
14. One day's jury fees will be assessed unless the Court is notified of settlement before **2:00 p.m.** on the judicial day before the trial. Counsel are reminded to promptly notify the Court of any settlement pursuant to Rule 5.1(c), Ariz.R.Civ.P.

IT IS ORDERED granting Defendant's request for the presence of a Court Reporter for the trial.

4:20 p.m. Matter concludes.

E-Courtroom Policies

All court proceedings are recorded by audio and video method and not by a court reporter. A record of the proceedings may be made by CD in lieu of a court reporter. Should you want an unofficial copy of the proceedings, the parties or counsel may purchase a CD for a cost of \$20.00. Orders for a CD and/or an official transcript of the proceedings, or questions regarding them, may be directed to Electronic Records Services (602) 506-7100.

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.